IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 29 of 2004 (M/B)

1. M/s Anamika Tourism Complex
   Kamlasan Cottage, Mallital, Nainital,
   Tehsil & District Nainital through its partner
   Mr. Shankar Lal Sah.
2. Shankar Lal Sah s/o Shri Kishori Lal Sah
3. Smt. Sushma Devi Sah w/o Shri Shankar Lal Sah,
4. Suhrid Sudarshan Sah, S/o Shri Shankar Lal Sah,
   All r/o Kamlasan Cottage, Mallital, Nainital,
   Tehsil and District Nainital. ….. Petitioners

Versus

1. Allahabad Bank
   A body corporate constituted under
   The Banking Companies (Acquisition and Transfer of Undertaking) Act, V of 1970
   Having its Head Office at 2 Netaji Subhash Road,
   Calcutta- 700001 and a Branch Office amongst other places
   At Mallital, District Nainital through Shri S.K.Garg,
   Senior Branch Manager/Principal Officer, Mallital (Nainital) Branch as well as the constituted attorney.
2. Regional Manager,
   Allahabad Bank, Regional Office, Dehradun,
   1 Gandhi Road, Dehradun. ….. Respondents

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Sri Manoj Sah, Advocate for the petitioners.
None for the respondents.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Sri Manoj Sah, Advocate for the petitioners.

None for the respondents.

2. The petitioners have filed this petition for the following reliefs:

   "i. issue a writ, order or direction in the nature of certiorari calling for records and quashing the notice dated 17.12.2003 (Annexure No. 4 to this writ petition) issued by Regional Manager, Allahabad Bank, Regional Office, Dehradun – respondent no. 2 and proceeding

initiated against the petitioners under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act 2002.

ii. pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iii. Award the cost of the writ petition to the petitioners."

3. The petitioners, in substance, are challenging the 'Possession Notice' issued by the respondents under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002.

4. The Apex Court in the case of Mardia Chemicals Ltd. and others Vs. Union of India and others reported in (2004) 4 S.C.C. 321 has held that the remedy against the 'Possession Notice' issued under Section 13 (4) of the Act is to approach the Debt Recovery Tribunal under Section 17 of the Act.

5. In this view of the matter, the writ petition is liable to be dismissed as not maintainable.

6. The petitioners, however, shall be at liberty to work out other remedies which may be available to them under the relevant provisions of law.

7. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
24.05.2006 **24.05.2006**

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